

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1930 of 2017 (O & M)
Date of Decision:12.03.2018

M/s BCH Electrics Limited

...Petitioner

Versus

Virender Magu

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Divjyot S. Sandhu, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for the respondent.

ANIL KSHETARPAL, J.

CM No.4422-CII-2018

Application is allowed, accompanying affidavit is taken on
record.

Main Case

Employer is in the revision petition against the order passed by
the learned Executing Court.

The point which arises for determination in the present case is
what is the retirement age of an official appointed under Punjab Welfare
Officer (Recruitment and conditions of services) Rules, 1952 ('Rules 1952' -
for short) framed under Factories Act, 1948?

Brief facts would be required to be noticed. Respondent-
employee was appointed as Labour Welfare Officer as provided under the
Rules of 1952 on 18.04.1981. His services were terminated vide order

dated 31.03.1983. He filed a suit for declaration. Learned trial Court declared the termination order to be illegal, however, denied the relief of mandatory injunction i.e. for reinstatement in service. First appeal preferred was allowed in favour of the employee and relief of mandatory injunction was granted. Regular second appeal filed was dismissed. Hence, as per the judgment and decree, he was to be reinstated in service. It is the case of the petitioner-employer that date of birth of the respondent is 01.01.1952, which is not disputed, hence, he has superannuated. Learned counsel for the petitioner submits that as per certified standing orders, every worker is retired from the services on attaining the age of 58 years. Clause 21 (6) dealing with the retirement, is extracted as under:-

“(6) Retirement :

Every worker shall stand retired from the services of the Company on attaining the age of 58 years. However, the Company may at its discretion and for a specified period employ/re-employ a person who has attained the age of retirement.”

Hence, it is submitted that the plaintiff having attained the age of superannuation on 31.12.2009 and hence, he is entitled to the benefits only up to 31.12.2009. On the other hand, learned counsel for the respondent-employee submits that as per Rule 6 of 1952 Rules, a Welfare Officer has to be given appropriate status corresponding to the status of the other executive heads of the factory. He submits that conditions of service of a Welfare Officer shall be the same conditions for as of the other members of the staff of corresponding status in the factory. Rule 6 of 1952

“6. Conditions of Service of Welfare Officers:-

(1) A Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the factory.

(2) The conditions of service of a Welfare Officer shall be the other members of the staff of corresponding status in the factory.

(3) Notwithstanding any thing contained in sub-rule (2) the management may impose and one or more of the following punishment on a Welfare Officer.

(i) Censure;

(ii) Withholding of increments including stoppage at an efficiency bar;

(iii) Reduction to the lower stage in a time scale;

(iv) Suspension; and

(v) Dismissal or termination of service in any other manner;

Provided that no order of punishment shall be passed against the Welfare Officer unless he has been informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to be taken in regard to him.

Provided further that the management shall not impose any punishment other than censure except with the previous concurrence of the Labour Commissioner,

Punjab.

4) *The Labour Commissioner, Punjab before passing orders on a reference made under second proviso to sub rule (3), shall give the Welfare Office and opportunity of showing cause against the action proposed to be taken against him and if necessary, any hear the parties in person.*

5) *If the Labour Commissioner, on a reference made to him under the second proviso to sub-rule (3) refuses to give his concurrence, the management may appeal to the State Government within thirty days from the date of the receipt of such refusal. The decision of the State Government shall be final and binding.*

6) *A Welfare Officer upon whom the punishment mentioned in clause (v) of sub-rule (3) is imposed may appeal to the State Government against the order of punishment within thirty days from the date of receipt of the order by him. The decision of the State Government shall be final and binding.*

7) *The State Government may pass such interim order as may be necessary pending the decision of appeal filed under the sub-rule (5) of sub-rule (6)”*

He, hence submits that hence the management is wrong in asserting that the respondent-employee has retired on attaining the age of superannuation. Employee has filed an affidavit by submitting that

submits that in view of the aforesaid affidavit, employee would be deemed to be continuing in service. It is further stated in the affidavit that there are no rules and regulations with regard to the service conditions of Senior Executive Officers and Labour Welfare Officers.

Employer is a public limited company. There are no statutory rules and regulations governing the service conditions of the employees. The service conditions are governed by the certified standing orders. An employee after attaining the age of superannuation, as per the certified standing order, cannot claim right to continue in service unless he establishes that the retirement age is more than 58 years. Merely because some officials have been permitted to continue beyond the age of 58, would not cloath the respondent with any right to claim that he also has a right to continue up to that age.

Learned counsel for the petitioner has vehemently argued that all employees are being ordinarily retired at the age of 58, as per the certified standing orders, except few who are called upon to continue working. He submits that this is solely on the pleasure of the employer and the respondent cannot claim the right to continue beyond the age of 58, which is the retirement age.

This Court has evaluated the arguments of learned counsel for the parties. In the considered opinion of this Court, an employee, who has been ordered to reinstated in service cannot claim after he has right to continue even after he has the age of superannuation. An employee cannot claim that he has a right to continue in employment merely on the ground that other employees have been allowed to continue.

retirement age. As per the Rules, the conditions of service of a Welfare Officer shall be the same as for other members of the staff of corresponding status in the factory. It is the positive case of the petitioner-employer company that the staff is retired at the age of 58 as per certified standing order including officials. Such being the position, contention of learned counsel for the respondent-employee cannot be accepted.

It is not in dispute that the respondent-employee has been paid in accordance with the decree till the date of his superannuation i.e. 31.12.2009.

In view thereof, the order passed by the learned Executing Court is liable to be set aside and the same is set aside.

No other point was raised at the time of arguments.

Hence, the revision petition is allowed.

12.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No